

REMARKS/ARGUMENTS

On pages 2 and 3 of the Restriction/Election Requirement, the Examiner contends that the claims of the present patent application are directed to the following patentably distinct species:

Species I – claims 1 to 10, 20 to 27, 29 and 31;

Species II – claims 11 to 19;

Species III – claims 30 and 32 to 37; and

Species IV – claims 28 and 38.

The Examiner indicates that the Applicants are required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In response, the Applicants elect Species I – claims 1 to 10, 20 to 27, 29 and 31, with traverse, for prosecution on the merits.

Claims 11 to 19, 28, 30 and 32 to 38 have been provisionally withdrawn. The Applicants reserve the right to pursue any or all of the non-elected claims in one or more divisional applications that may eventually be filed.

In accordance with 37 C.F.R. 1.143, the Applicants respectfully request that the Examiner reconsider and withdraw or modify the Restriction/Election Requirement.

As described below, the Restriction/Election Requirement is plagued with incorrect and improper statements and with improper election requirements.

The Applicants request that the Examiner consider and examine all of the claims of the present patent application or at least claims 11 to 19, 28 and 30 together with elected claims 1 to 10, 20 to 27, 29 and 31.

The Examiner is also requested to retract certain statements made in respect of patentability of claims of the present patent application.

1. Incorrect statements made in respect of Species I

The Examiner contends that claims 1 to 10, 29 and 31 are directed to “a device to receive signals from a remote controller, without claiming a transmitter (i.e., “a remote on-board receiver” to accept remote signals)”.

The Applicants consider that the Examiner has completely mischaracterized these claims since each of them is clearly directed to a “remote control device” that comprises a “transmission unit” or “transmission means” for “generating an RF transmission” conveying digital command signals to a locomotive control device mounted on board a locomotive.

2. Improper election requirement in respect of Species II

The Examiner contends that claims 11 to 19 are directed to “a locomotive control device/receiver” that is classified in U.S. Classification 340/825.69 and 825.72. The Examiner relies on this contention for the election requirement in respect of these claims.

It is respectfully submitted that the Examiner has failed to establish that a search of all the claims of the present patent application or at least of claims 11 to 19 together with elected claims 1 to 10, 20 to 27, 29 and 31, would be a serious burden as required by MPEP 803. Specifically, MPEP 803 provides that “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions” (emphasis added).

The Examiner considers that elected claims 1 to 10, 20 to 27, 29 and 31 are directed to subject matter that is classified in U.S. Classification 340/825.22. Claims 11 to 19 and elected

claims 1 to 10, 20 to 27, 29 and 31 are thus directed to subject matter that is classified, according to the Examiner, in a common class and subclass (i.e., U.S. Class 340, Subclass 825). These two sets of claims thus differ in classification, according to the Examiner, *only in sub-subclass*. This minute difference in classification in no way results in a serious burden on the Examiner.

In addition, notwithstanding the above comments regarding common classification, elected claims 1 to 10, 29 and 31 and claims 11 to 19 each claim, in the context of a locomotive remote control system, a processing unit, a processing module or processing means adapted for acquiring a set of operational settings on the basis of received configuration information and for generating command signals or control signals based in part on the set of operational settings. Thus, searching and examination of elected claims 1 to 10, 29 and 31 would likely result in the Examiner being exposed to art potentially relevant to claims 11 to 19.

In light of the above, it is respectfully submitted that the Examiner has failed to establish that a search of all of the claims or at least of claims 11 to 19 together with elected claims 1 to 10, 20 to 27, 29 and 31, would constitute a serious burden. The Applicants therefore request that the Examiner consider and examine all of the claims or at least claims 11 to 19 together with elected claims 1 to 10, 20 to 27, 29 and 31.

3. *Improper election requirement in respect of Species III*

The Examiner contends that claims 30 and 32 to 37 are directed to “an apparatus for configuring a receiver (of a remote control) according to transmitted command signals”.

The Applicants consider that the Examiner has completely mischaracterized claim 30 since that claim is clearly directed to a “remote control device suitable for use in a locomotive remote control system”. In fact, claim 30 is very similar to elected claim 1 but refers specifically to switchyard operational settings as opposed to operational settings in general.

It is therefore respectfully submitted that the election requirement in respect of claim 30 is improper and the Examiner is requested to consider and examine claim 30 together with elected claims 1 to 10, 20 to 27, 29 and 31.

4. *Improper election requirement in respect of Species IV*

The Examiner contends that claims 28 and 38 are directed to “an apparatus including both a locomotive remote controller, a remote control device/transmitter and a on-board receiver”.

The Applicants consider that the Examiner has completely mischaracterized claim 38 since that claim is clearly directed to an “apparatus suitable for configuring a locomotive control system” that comprises a “processing unit” and a “transmission unit”. There is absolutely no mention in claim 38 that the claimed apparatus comprises a remote control device or an on-board receiver.

Furthermore, claim 28 is directed to a “locomotive remote control system” that comprises a “remote control device” and a “locomotive control device”. The Examiner will appreciate that the remote control device claimed in claim 28 corresponds to the remote control device claimed in elected claim 1. For reasons similar to those presented above in Section 2, it is submitted that the Examiner has failed to establish that a search and examination of claim 28 together with elected claims 1 to 10, 20 to 27, 29 and 31 would constitute a serious burden.

The Applicants therefore request that the Examiner consider and examine claim 28 together with elected claims 1 to 10, 20 to 27, 29 and 31.

5. *Improper statements regarding patentability*

On page 2 of the Restriction/Election Requirement, the Examiner states that “[a]ccording to the examiner’s interpretation of pending generic claims, pending generic claims are not patentable because the applicants claim well-known subject matters”.

The Applicants respectfully request that the Examiner retract this statement made without presenting a proper claim rejection under 35 U.S.C. 102 or 103.

Summary

In view of the foregoing, the Examiner is respectfully requested to:

- consider and examine all of the claims of the present patent application or at least claims 11 to 19, 28 and 30 together with elected claims 1 to 10, 20 to 27, 29 and 31; and
- retract an improper statement made in respect of patentability of the invention defined in the claims of the present patent application.

CONCLUSION

Elected claims 1 to 10, 20 to 27, 29 and 31 are believed to be in allowable form.

Furthermore, the Applicants respectfully request that the Examiner consider all of the other claims of the present patent application or at least claims 11 to 19, 28 and 30. These other claims are also believed to be in allowable form. The Applicants also request that the Examiner retract an improper statement made in respect of patentability of the invention defined in the claims of the present patent application.

Early allowance of the present patent application is earnestly solicited.

If the claims of the present patent application are not considered to be in full condition for allowance, for any reason, the Applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP 707.07(j) or in making constructive suggestions pursuant to MPEP 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



William R. Evans
c/o Ladas & Parry LLP
26 West 61st Street
New York, New York 10023
Reg. No. 25858
Tel. No. (212) 708-1930

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